

JAMES R. NORMAN

IBLA 82-1083

Decided September 23, 1982

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 112837.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Under sec. 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b), the owner of an unpatented lode or placer mining claim located after Oct. 21, 1976, must file in the proper BLM office, within 90 days after the location of such claim, a copy of the official record of the notice of location or certificate of location. Failure to file such instrument timely is deemed conclusively to constitute an abandonment of the mining claim by the owner, and it is properly declared void.

APPEARANCES: James R. Norman, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James R. Norman appeals the decision of the California State Office, Bureau of Land Management (BLM), decision dated June 21, 1982, which returned the notice of location and service fee for recordation of the Lost Linnor placer mining claim, CA MC 112837, because the notice of location was not filed with BLM within 90 days after the date of location as required by section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(b).

The claim was located on February 7, 1982, recorded with the county recorder on March 2, 1982, and recorded with BLM on May 24, 1982.

On appeal, appellant states that he filed the copy of the notice of location with BLM within 90 days of recording it with the county recorder, but due to the recorder's returning the notice to him twice, once before recording it and once after, it was not filed within 90 days of location. He maintains, however, that he did make a good faith attempt and that the intent of the regulations is not to deprive him of the mining claim.

[1] Section 314(b) of FLPMA requires the owner of an unpatented mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the proper BLM office within 90 days after the date of location; section 314(c) provides that failure to file the instrument required by section 314(b) shall be deemed conclusively to constitute an abandonment of the claim by the owner. The requirements of the statute and the consequences for noncompliance are restated in the regulations at 43 CFR 3833.1-2(b) and 3833.4(a). Since a copy of the notice of location for appellant's claim was not filed with BLM within 90 days after February 7, 1982, BLM properly refused to accept the filing tendered and declared the claim abandoned and void. This Board has no authority to waive noncompliance with the statutory requirements. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant should confer with BLM about the possibility of relocating this claim.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Will A. Irwin
Administrative Judge

